

AP247 COUNCILLOR CONDUCT ASSESSMENT AND INVESTIGATION POLICY

OVERVIEW

This is Council's assessment and investigation policy which details how complaints about a suspected conduct breach of a Councillor are dealt with as required by the *Local Government Act 2009* (the LGA) and the *City of Brisbane Act 2010* (CoBA).

APPLICABILITY

This policy applies to all assessments, investigations and determinations of a complaint about a suspected conduct breach of a Councillor, which has been referred to Council by the Assessor.

LEGISLATION

Local Government Act 2009
City of Brisbane Act 2010

DEFINITIONS

Assessor means the Independent Assessor appointed under the LGA.

Conduct has the same meaning as set out in the LGA.

Conduct breach has the same meaning as set out in the LGA.

Corrupt Conduct has the same meaning as set out in the *Crime and Corruption Act 2001*.

Councillor Conduct Register means the register required to be kept by Council in accordance with the LGA.

Council official means a Councillor or the Chief Executive Officer (section 150C of the LGA).

Investigator means a person or entity external to Council, assigned by the Disputes Commissioner to conduct an investigation into a suspected conduct breach of a Councillor.

Local Law means the *Meetings Local Law 2001*, as amended or replaced from time to time.

Misconduct has the same meaning as set out in the LGA.

Referral Notice has the same meaning as set out in the LGA.

Unsuitable meeting conduct has the same meaning as set out in the LGA.

RESPONSIBILITIES

Disputes Commissioner, Governance, Council and Committee Services
Chief Executive Officer
Councillor Ethics Committee



Confidentiality

Matters concerning a suspected conduct breach of a Councillor are confidential except as otherwise specifically provided for either in the LGA or this policy.

Note: It must be kept in mind that the matter is an allegation only and not yet proven. Further, there may be circumstances where the detail of the referral will need to remain confidential to Council. Any release of confidential information that a Councillor knows, or should reasonably know, to be confidential to Council may be contrary to CoBA and dealt with as Misconduct.

Natural Justice

Any investigation of a suspected conduct breach of a Councillor/s must be carried out in accordance with the principles of natural justice.

Natural justice or procedural fairness, refers to three key principles:

- the person being investigated has a chance to have his or her say before adverse formal findings are made and before any adverse action is taken (fair hearing)
- the investigator/s should be objective and impartial (absence of bias) and
- any action taken is based on evidence (not suspicion or speculation).

An absence of bias means that any investigation must not be biased or be seen to be biased in any way. This principle embodies the concept of impartiality.

Decisions based on evidence require that the investigation should not be based on mere speculation or suspicion but instead must be based upon evidence material.

A proper examination of all issues means the investigation must give a proper and genuine consideration to each party's case.

POLICY

All Councillor conduct referrals to Council must adhere to the following.

1. Referral (other than from the Assessor)

If a Council official is made aware of a complaint about Councillor conduct (made either orally or in writing) or becomes aware of a conduct breach of a Councillor, the Council official must refer the matter to the Assessor.

Note: A Council official must not give the notice vexatiously or other than in good faith.

Council will take no further action in relation to the referred matter unless the Assessor refers the matter back to Council.

Note: Unsuitable meeting conduct will not be referred to the Assessor, however Council may decide to investigate and determine what action, if any, may be taken.

2. Referral from the Assessor

If the Assessor reasonably suspects a Councillor has engaged in a conduct breach, the CEO will receive a Referral Notice from the Assessor. The Referral Notice will include:

- details of the conduct and any complaint received about the conduct
- why the Assessor reasonably suspects the Councillor has engaged in a conduct breach and
- information about the facts and circumstances forming the basis for the Assessor's reasonable suspicion.

Note: In all cases, Council will investigate in a way that is consistent with this policy, or, in another way Council decides by resolution.

On occasion, the Assessor may determine, following receipt of information about the conduct of a Councillor, to dismiss the complaint, or that no further investigation or action is required by Council due to the complaint being frivolous or vexatious or for the reasons set out in the LGA. In this case, the Assessor will advise Council in writing of the outcome that no further action is required. Council will note the correspondence received from the Assessor and no further action will be taken.

3. Actions following receipt of referral

If the Assessor reasonably suspects a Councillor has engaged in a conduct breach and decides to refer the conduct to Council, the Assessor will notify Council by giving a Referral Notice to Council.

The CEO will forward a copy of the Referral Notice to the Lord Mayor and all Councillors as a confidential document and acknowledge receipt to the Assessor.

The Referral Notice will then be actioned in either of the following ways:

- (a) in the ordinary course and seven days after a copy of the Referral Notice is forwarded to the Lord Mayor and Councillors, the Disputes Commissioner will assign an Investigator to investigate and make recommendations to Council about dealing with the conduct.
- (b) the Lord Mayor and Councillors will be afforded a period to determine whether any disagreement or objection to the Assessor's Referral Notice is identified. Should the Lord Mayor or Councillor/s (other than the subject Councillor/s or complainant/s) disagree with the Assessor's Referral Notice or form the opinion that the complaint should be dealt with in any way other than under this policy, the Lord Mayor or Councillor/s may require the matter be placed on the agenda of the next Council meeting to decide on the appropriate process to investigate the complaint. Any such request must be made in accordance with the Local Law and within seven days of being provided the Referral Notice (seven-day period).

4. Investigation of suspected conduct breach

Once assigned, the Investigator will manage the investigation of a suspected conduct breach of a Councillor. Prior to preparing an investigation report, the Investigator will provide the Councillor the subject of the complaint with their preliminary findings of the investigation and allow the Councillor to give evidence or a written submission about the suspected conduct and the preliminary findings. The Investigator must consider any evidence or written submission by the Councillor in the preparation of their investigation report. If a Councillor does provide evidence, a summary of that evidence must be included in the investigation report. Any written submission by the Councillor must also be included in full in the investigation report.

5. Decision not to start or to discontinue an investigation

An Investigator may recommend that an investigation not start or be discontinued if:

- the Investigator becomes aware of the complainant withdrawing their complaint or the complainant consenting to the investigation not being started or it being discontinued
- the complainant does not comply with a request by the Investigator to provide further information or
- there is insufficient information to investigate the conduct.

An Investigator must recommend that an investigation not start or be discontinued if the office of the Councillor is vacated during the investigation.

The Investigator's recommendation must be sent to the Disputes Commissioner who will liaise with the CEO to arrange, in consultation with the Chair of the Councillor Ethics Committee, a date, time and place for a meeting of the Councillor Ethics Committee. The Councillor Ethics Committee will consider the recommendation and decide whether the investigation should not commence or be discontinued. Where the office of the Councillor was vacated during the investigation, the Councillor Ethics Committee must accept the Investigator's recommendation that the investigation not start or be discontinued. If a decision is made not to start or discontinue an investigation, notice of the decision must be provided to the Councillor subject of the complaint, the Assessor and to the complainant if their contact details are known.

6. Possible misconduct or corrupt conduct

If during an investigation the Investigator obtains information which indicates a Councillor may have engaged in misconduct, the Investigator must advise the Disputes Commissioner. The Disputes Commissioner will liaise with the CEO to refer the matter back to the Assessor as possible misconduct.

If during an investigation the Investigator obtains information which indicates a Councillor may have engaged in alleged corrupt conduct, the Investigator must advise the Disputes Commissioner. The Disputes Commissioner will then liaise with the CEO who will then notify the Crime and Corruption Commission of the alleged corrupt conduct. Instances of suspected corrupt conduct may be referred to the Councillor Conduct Tribunal if determined by the Crime and Corruption Commission to be misconduct.

7. Completion of investigation

On completion of an investigation, the Investigator must provide a report to the Disputes Commissioner outlining the investigation process, the investigation findings, and any recommendations about dealing with the conduct and the cost of the investigation. The Disputes Commissioner will consider the findings and recommendations in the Investigator's report and liaise with the CEO to arrange, in consultation with the Chair of the Councillor Ethics Committee, a date, time and place for a meeting of the Councillor Ethics Committee. The Councillor Ethics Committee will consider the investigation report and decide on whether a Councillor has engaged in a conduct breach and, if so, what disciplinary action will be taken under the LGA.

Prior to the Councillor Ethics Committee meeting, the Disputes Commissioner will prepare a summary of the investigation report to be published on Council's website on the earlier of the next business day after notice of the Councillor Ethics Committee meeting (at which the decision is to be made) is given or when its meeting agenda is made publicly available. The summary must include the following:

- the name of the Councillor whose conduct has been investigated
- a description of the alleged conduct
- a statement of the facts established by the investigation
- a description of how natural justice was afforded to the Councillor during the investigation
- a summary of the findings of the investigation
- any recommendations made by the Investigator

If during this process a Councillor is aggrieved by the outcome of the investigation, the Councillor may be entitled to apply for a judicial review of Council's decision or make a complaint to the Queensland Civil and Administrative Tribunal (QCAT).

Note: If Council decides to take action to discipline a Councillor for a conduct breach on three occasions during a period of one year, or Council has previously made an order that a particular type of conduct engaged in by a Councillor will be dealt with as misconduct and there is reasonable suspicion that the Councillor has engaged in the same conduct, the CEO must give the Assessor a notice about the Councillor's conduct, and all information held by Council that relates to the conduct.

8. Notice about the outcome of investigation

After an investigation is finalised and the matter has been determined by the Councillor Ethics Committee, the CEO will give written notice about the outcome of the investigation to Councillors, the Assessor and the person who made the complaint if their details are known. A copy of the investigation report redacted in accordance with section 150AFA(5) of the LGA, must also be published on Council's website on the earlier of when the minutes of the Councillor Ethics Committee are made publicly available or before 5pm on the tenth day after the Councillor Ethics Committee meeting at which the decision was made, was held. A complainant is unable to appeal a decision made by Council, other than via a judicial review or via QCAT.

9. Councillor conduct register

The CEO must ensure decisions about a suspected conduct breach are entered into the Councillor Conduct Register.

10. Expenses

The payment of costs relating to an investigation is subject to normal budget and approval processes.

Council must pay any reasonable expenses associated with the early resolution or investigation of a suspected conduct breach of a Councillor including any costs of:

- an Investigator undertaking an investigation for Council
- travel where the Investigator is needed to travel to undertake the investigation or to interview witnesses
- seeking legal advice
- engaging an expert.

Note: Costs incurred by a Councillor in responding to formal allegations of a suspected conduct breach, including costs incurred in responding to a notice given to a Councillor by the Investigator, as outlined in the LGA, will be managed in accordance with current Council practice. Costs incurred by a Councillor arising from disciplinary action (as determined by Council in accordance with the LGA) will not be reimbursed.

APPROVING AUTHORITY

Council Resolution 616/2019-20, adopted on 26 May 2020
Council Resolution 343/2024-25, adopted on 4 February 2025

OWNER

Divisional Manager, City Administration and Governance

FURTHER ASSISTANCE

Disputes Commissioner, Office of the Disputes Commissioner, City Administration and Governance
General Manager, Governance, Council and Committee Services, City Administration and Governance

RELATED INFORMATION

Local Government Act 2009
[Code of Conduct for Councillors in Queensland](#)
City of Brisbane Act 2010

REVIEW DATE

Due: 4 February 2027
Last reviewed: December 2024